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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/632,407

08/01/2003

Jose F. Zamudio-Tena

00216-594001

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27752

7590

11/09/2006

THE PROCTER & GAMBLE COMPANY  
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EXAMINER

DODSON, SHELLEY A

ART UNIT

PAPER NUMBER

1616

DATE MAILED: 11/09/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/632,407

Applicant(s)

ZAMUDIO-TENA ET AL.

Examiner

SHELLEY A. DODSON

Art Unit

1616

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on amendment and response dated 9/25/06.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-15 AND 17-23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-15 and 17-23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

SHELLEY A. DODSON  
PRIMARY EXAMINEE

**Attachment(s)**

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Notice of Informal Patent Application
- ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

Claims 1-15 and 17-23 are pending in this application.

### ***Action Summary***

1.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

2.

The rejection of claims 15-22 under 35 U.S.C. 112, second paragraph is hereby expressly withdrawn in view of applicant's amendment.

3.

The rejection of claims 1-15 and 17-23 under 35 U.S.C. 103(a) as being unpatentable over Angelone, Jr. et al. USP No. 5,587,153 in view of Nichols USP No. 5,000,947 is hereby maintained for the reasons stated in the previous office action.

***Response to Arguments***

3.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, applicant is arguing that Nichols is teaching away from including its liquefiable powders in liquids and oils. It would appear that applicant is mischaracterizing the reference because of the statement in column 1, lines 56-59 that there are problems associated with liquids and oils. Applicant is directed to Example 5 where clearly mineral oil is present in the referenced compositions. Applicant is further advised that the instant composition can be in any form. Note claims 1-3 where applicant does not identify any particular vehicle for the instant claims. Additionally, applicant is arguing the references separately and not as a whole. The references are taken together as a whole and not separately. Nichols states that the referenced compositions solve a problem that has historically been associated with liquids and oils, which is a tendency to separate because they are incompatible liquids, i.e. oil and water. This does not mean that the referenced liquefiable powders are not to be used in oil-in-water systems. Additionally with respect to the properties claimed in claims 5, 7, and 8, it is the examiner's position that since the

instant compositions are disclosed that said properties would be inherently possessed by the referenced compositions. This is also the examiner's position with respect to the method claims 15-23. The capsules of the prior art are exposed to liquid prior to incorporating them into the composition. Angelone discloses that the refractive indices of the water and oil phases match to at least 0.0004 and the product clarity is better than thirty. These properties are within the ranges claimed by applicant. Again, applicant has to take the references together rather than separately to argue the point that the claimed limitations are not met the prior art.

#### ***Prior Art***

4.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Nichols USP No. 5,290,570 has been cited to clarify that the delivery systems of Nichols are intended for various forms such as oil-in-water emulsions to solve the problem found in the art with incompatible liquids.

***Conclusion***

5.

Claims 1-15 and 17-23 remain rejected.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

***Telephone Inquiries***

6.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **SHELLEY A. DODSON** whose telephone number is (571) 272-0612. The examiner can normally be reached from 7:30 AM to 4:00 PM Monday to Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Johann Richter, can be reached at 571-272-0646. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read 'Shelley A. Dodson', with a stylized flourish at the end.

Shelley A. Dodson  
Primary Patent Examiner  
Technology Center 1600